2000

State of Utah, Division of Forestry, Fire and State Lands v. Tooele County, Utah; Six Mile Ranch Company, Craig S. Bleazard, Marc C. Bleazard, and John D. Bleazard : Brief of Appellee

Utah Supreme Court

IN THE UTAH SUPREME COURT

STATE OF UTAH, by and through DIVISION OF FORESTRY, FIRE & STATE LANDS, Plaintiff/Appellant, v. TOOELE COUNTY, UTAH; SIX MILE RANCH COMPANY, a Utah corporation; CRAIG S. BLEAZARD, an individual; MARK C. BLEAZARD, an individual; and JOHN D. BLEAZARD, an individual, Defendants/Appellees.	)	Appeal No. 20000493-SC Priority No. 15 (Subject to Assignment to Court of Appeals)

BRIEF OF APPELLEES SIX MILE RANCH COMPANY, CRAIG S. BLEAZARD, MARK C. BLEAZARD AND JOHN D. BLEAZARD

APPEAL FROM A SUMMARY JUDGMENT FOR DEFENDANTS ENTERED BY THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY, STATE OF UTAH, THE HONORABLE DAVID S. YOUNG, PRESIDING

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JURISDICTION

This is an appeal from a summary judgment (R. 345-348; Brief of Appellant, Addendum A) in favor of defendants that was entered in the Third Judicial District Court on May 8, 2000. The State of Utah filed a timely Notice of Appeal on June 6, 2000. Pursuant to Utah Code Ann. §§ 78-2-2(j) and 78-2a-3(2) (1996), the Utah Supreme Court has jurisdiction of the appeal.

ISSUES PRESENTED AND STANDARDS OF REVIEW

1. Did former Utah Code Ann. § 27-12-102.4 (Supp. 1993) require Tooele County to give written notice of the Petition to Vacate the West Stansbury Road to abutting landowners in addition to notice by publication?

2. If so, did the statute require written notice to the State of Utah notwithstanding the fact that it was neither an owner of record of land abutting the West Stansbury Road nor did its address appear on the rolls of the Tooele County Assessor?

Standards of Review: Summary Judgment is appropriate when there is no issue of material fact and the moving party is entitled to judgment as a matter of law. *Surety Underwriters v. E & C Trucking, Inc.,* 2000 UT 71, ¶ 15; *State ex rel. Utah Air Quality Board v. Truman Mortensen Family Trust,* 2000 UT 67, ¶ 16; Utah R. Civ. P. 56(c). On appeal of a grant of summary judgment, the appellate court determines if the trial court erred in applying the governing law. *Gold Standard, Inc. v. Getty Oil Co.,* 915 P.2d 1060, 1063 (Utah 1996). Interpretations of a statute present questions of law reviewed for correctness, with no deference to the trial court. *Lieber v. ITT Hardford Insurance Center, Inc.,* 2000 UT 72, ¶ 7; *Stephens v. Bonneville Travel, Inc.,* 935 P.2d 518, 519 (Utah 1997).

DETERMINATIVE PROVISIONS

The full text of the relevant statutes are included in Addendum B of the Brief of Appellant.

STATEMENT OF THE CASE/STATEMENT OF FACTS

Nearly six years after Appellees believed a dispute regarding the status of the West Stansbury Road had been resolved when Tooele County vacated whatever interest, if any, it possessed in the road, the Division of Fire, Forestry and State Lands (the "Division") brought this action seeking to set aside that legislative action. Although the Division has not so much as alleged that it did not have *actual* knowledge and the opportunity to attend the hearing on the Petition to Vacate (R. 1-14), it claims that Tooele County Ordinance 93-9 must be set aside because the Division did not receive *written* notice of the Petition to Vacate (R. 13).

As indicated by Figure 1 of Appellant's brief, the West Stansbury Road traverses the west side of Stansbury Island in a roughly north-south direction. As illustrated in Figure 1 (next page) and Addendum A to this brief, however, the only portion of the West Stansbury Road that was being claimed by Tooele County to be a county road was that portion of the road located to the south of approximately the middle of section 16 of Township 2 North, Range 6 West (R. 234).[1] In preparing the Notice to Vacate, however, Tooele County included in the legal description of the lands involved all of the lands located above the meander line of the Great Salt Lake (R.94, 107).

Accordingly, Tooele County considered landowners located above the meander line of the Great Salt Lake to be the abutting landowners, to wit: Six Mile Ranch

[1] The road to the north of the portion of the West Stansbury Road that was claimed by Tooele County to be a public road is in fact a private easement leading to the MagCorp parcel and a private road across the MagCorp parcel to where it crosses the meander line of the Great Salt Lake (R. 300-3001).

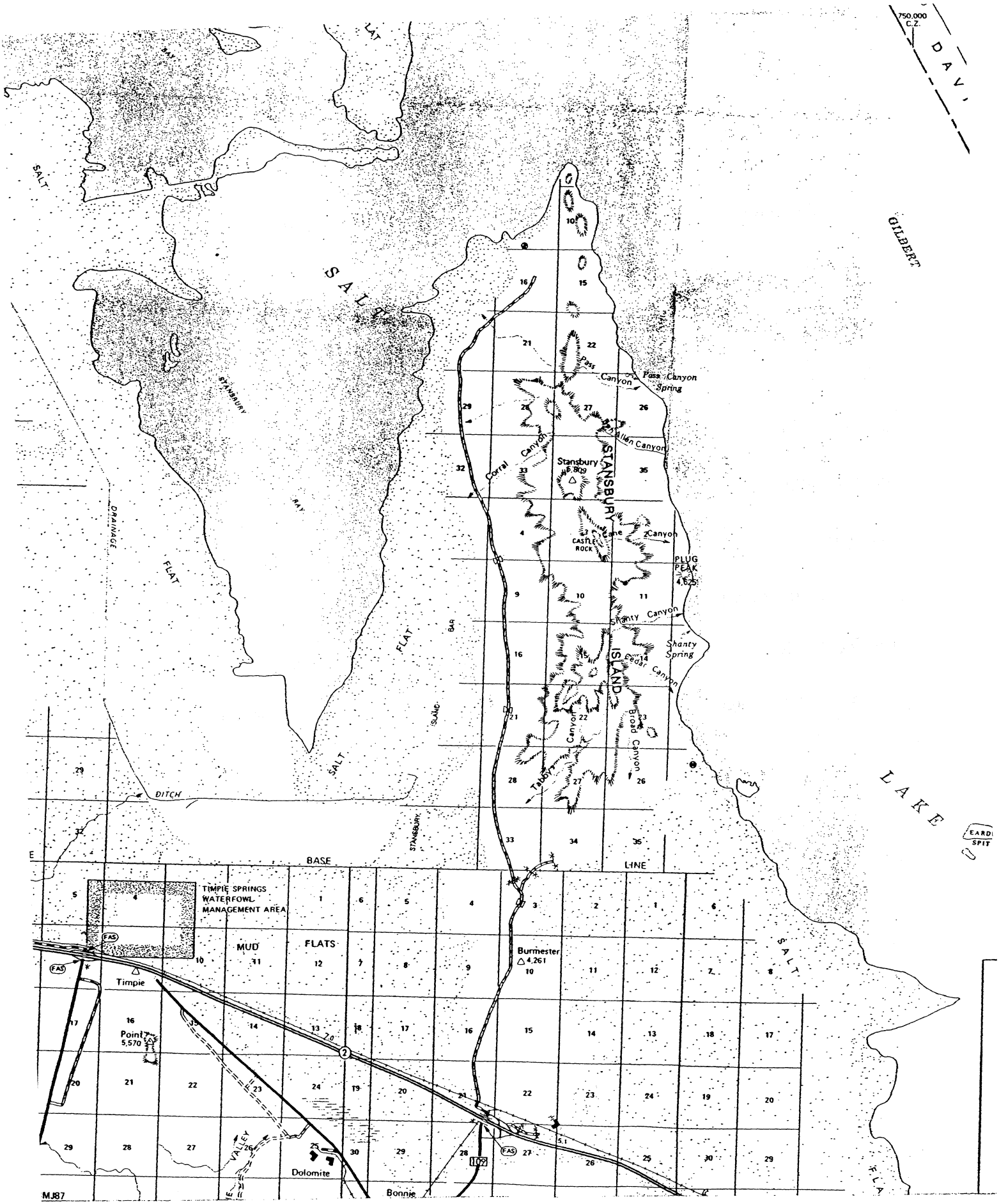

FIGURE 1 (EXCERPT FROM ADDENDUM A)

Company, Mark Bleazard, Craig Bleazard, John Bleazard, Rhea Castigno, Reese Richman, as Trustee of the Reese Richman Family Trust, Robert Cook, Amoco, Magnesium Corporation of America and the Bureau of Land Management (R. 297). Out of these abutting landowners, Six Mile Ranch Company, Mark Bleazard, Craig Bleazard, John Bleazard, Rhea Castigno, and Reese Richman were the petitioners seeking to have the West Stansbury Road vacated (R. 297). Further, it is undisputed that the remaining landowners, MagCorp, Amoco, Cook and the BLM, all had actual notice and the opportunity to appear at the hearing on the Petition to Vacate (R. 296-97). In fact, with the exception of Amoco, all of the abutting landowners attended the hearing on the Petition to Vacate (R. 296).

As required by section 27-12-102.4, notice of the Petition to Vacate and the hearing thereon was published in a local newspaper, the *Tooele Transcript-Bulletin*, once a week for four consecutive weeks (R. 94, 107). Following publication, the Petition to Vacate became a matter of considerable public interest and was the subject of local radio and television coverage and articles in the local newspapers (R. 296). In fact, over forty people attended the public hearing in June of 1993, including representative(s) of MagCorp, the BLM, the Sierra Club, the Wasatch Mountain Club, the Utah Mountain Bike Association, the Tooele Wildlife Federation, and Representative Jim Gowans, a member of the Utah Legislature (R. 296). On August 17, 1993, by a vote of two to one, the Tooele County commissioners enacted

Ordinance 93-9 vacating any right Tooele County had acquired or was claiming in the West Stansbury Road (R. 296).

In reliance on that Ordinance, Appellees Six Mile Ranch and the Bleazards thereafter erected a gate across the road and had expended nearly $100,000 in litigation with MagCorp concerning whether MagCorp had retained a private right-of-way in the road following its vacation and, if so, the scope and extent of that right-of-way (R. 7-8, 265-296). Some six years later and during the pendency of that private litigation, the Division brought this action seeking to set aside Ordinance 93-9. In furtherance thereof, the Division filed a Motion for Summary Judgment on the basis that it, as an abutting landowner, was entitled to, but did not receive, written notice of the Petition to Vacate the West Stansbury Road.[2] (R. 79-80) Tooele County opposed the motion by disputing that the Division is an abutting landowner because the subject sovereign lands do not abut the vacated public road, and in any event, by submitting the Affidavits of the Tooele County Assessor and the Tooele County Recorder attesting to the fact that the Division was neither the record owner of the sovereign lands nor did its address appear on the rolls of the Tooele County Assessor (R. 112-118). In addition, Six Mile Ranch and the Bleazards filed a Cross Motion for Summary Judgment contending that because notice by publication had been made, written notice was not required under section 27-12-102.4 and, in any event, the Division was not entitled to written notice

[2] Notably absent from the Division's motion was any assertion in its statement of undisputed facts that it was an owner of land abutting the portion of the West Stansbury Road that had been vacated (R.81-83).

because it was neither an abutting landowner of record, nor did its address appear on the rolls of the Tooele County Assessor (R. 284, 287-92, 337, 355 at 20-22 & 30-38).

In granting summary judgment in favor of the defendants, District Judge David S. Young agreed with Appellees that section 27-12-102.4 did not require written notice to abutting landowners because notice by publication had been made. In any event, even assuming the statute required written notice to abutting landowners in addition to notice by publication, Judge Young concluded that the Division was nevertheless not entitled to such notice because it was neither an abutting landowner *of record* nor did its mailing address appear on the rolls of the Tooele County Assessor. Consequently, as a matter of law, therefore, Judge Young concluded that Tooele County had complied with the notice requirements of section 27-12-102.4 (Supp. 1993) and granted summary judgment in favor of defendants (R. 345-38).

SUMMARY OF ARGUMENT

On appeal, the Division does not claim that the lower court erred in granting summary judgment because there existed disputed issues of material fact. Rather, the Division contends that the lower court erred:

(1) in construing the meaning of section 27-12-102.4 to the effect that it did not require written notice be mailed to abutting landowners because notice by publication had been made; and

(2) ruling that, in any event, even assuming written notice was required, the Division would not have been entitled to such notice because it was not an

abutting landowner of record whose address appears on the rolls of the Tooele County Assessor.

Contrary to the arguments of the Division, Utah Code Ann. § 27-12-102.4 is ambiguous at best as to whether written notice to abutting landowners is required in addition to notice by publication. Depending on the significance attached to the placement of a single comma, the statute can be read to either require written notice in addition to notice by publication or, alternatively, written notice only when notice by publication is not available. Subsequent to the enactment of Ordinance 93-9, however, the Legislature revised and recodified section 27-12-102.4 into a new section 72-3-108 effective March 21, 1998. As the Division itself acknowledges in its brief at p. 19, under the recodified version of the statute the Legislature clearly manifested its intent that written notice be required only in the absence of notice by publication. Utah Code Ann. § 72-3-108(2) (Supp. 1999) (amended 2000). Appellant's brief Addendum B.

Despite this clear manifestation of legislative intent and without citing to any direct evidence whatsoever, the Division asserts that the recodified version of the statute was a "mistake" that would lead to unlawful and absurd results. Contrary to the arguments of the Division, the requiring of written notice only in instances where notice by publication has not been made does not raise due process concerns, is not inconsistent with the purpose of the statute and is not contrary to *Nelson v. Provo City*, 872 P.2d 35 (Utah App. 1994). Finally, given that an amendment (as opposed to a recodification) to a statute is presumed to change prior law absent clear evidence to the

contrary, the fact that the Legislature recently amended section 72-3-108 to require written notice in addition to notice by publication[3] undermines rather than supports the Division's construction of section 27-12-102.4.

In any event, even assuming section 27-12-102.4 required written notice in addition to notice by publication, it does not follow that the Division was entitled to such notice. The clear and unambiguous language of section 27-12-102.4 only requires that written notice be mailed to abutting landowners *of record* whose addresses also appear on the rolls of the County Assessor. Here, it is undisputed that the Division was not an owner of record and, as a consequence, its address as such did not appear on the rolls of the Tooele County Assessor. Thus, even if the requirements of section 27-12-102.4 are strictly applied, as a matter of law the Division would not have been entitled to receive written notice.

The Division's attempt to avoid that conclusion by arguing that the basis of the lower court's ruling was that the Division does not pay taxes is without merit. As set forth in the Order Granting Summary Judgment, the express basis of the court's ruling was that "the Division was not a party to whom such written notice would be have been required to be provided because *it was not an abutting property owner on the rolls of the Tooele County Assessor.*" (R. 345-348). Likewise, the Division's effort to shift the blame to Tooele County for its own failure to record the Division's ownership interest

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[3] The recent amendment also specifically requires notice in every case be provided to the Utah Department of Transportation, a requirement that was absent from both the earlier versions of the statute. Utah Code Ann. § 72-3-108 (2000).

in the sovereign lands is without merit. Under Utah law, it is the owner of property that has the legal duty to record an interest, not third parties.

For the foregoing reasons, the decision of the lower court granting summary judgment in favor of Appellees should be affirmed.

ARGUMENT

I. SECTION 27-12-102.4 DID NOT REQUIRE TOOELE COUNTY TO PROVIDE WRITTEN NOTICE TO THE ABUTTING LANDOWNERS.

A. At Best Section 27-12-102.4 Is Ambiguous As To Whether Or Not The Legislature Intended To Require Written Notice In Addition To Notice By Publication.

In its brief, the Division argues that the plain and unambiguous language of section 27-12-102.4, *as punctuated*, required Tooele County to provide written notice in addition to notice by publication. Brief of Appellant at pp. 11-16. As the Division must and does concede, however, depending on the meaning attached to the use and placement of a single comma, section 27-12-102.4 can be read to either require mailing of written notice only if notice by publication has not been made or, alternatively, to require mailing of written notice in addition to notice by publication. Brief of Appellant at pp. 13-14. In other words, the Division has implicitly conceded in its brief that section 27-12-102.4 does have two reasonable interpretations. Appellant's brief at pp. 11-17.

Given the legislative history subsequent to the enactment of section 27-12-102.4, the Division's concession in this regard would have been difficult to avoid. Although

the punctuation of a statute can be a useful tool in ascertaining legislative intent (*see, e.g., Board of Education v. Hanchett,* 167 P. 686, 687 (Utah 1917)), as a general rule, punctuation in and of itself is afforded little weight and will be entirely disregarded if contrary to legislative intent. *See, e.g., Id.; Fleischhauer v. Bilstad*, 379 P.2d 880, 884 (Ore. 1963).

Indeed, the legislative history of section 27-12-102.4 itself demonstrates the wisdom of not placing undue reliance on the use of punctuation. Following the enactment of Ordinance 93-9, section 27-12-102.4 was recodified in the 1998 Legislature as section 72-3-108. In performing that recodification, the legislative history evidences, and the parties agree, that the Legislature did not intend to change the meaning of the prior statute. *See* Appellant's brief at pp. 18-19. Given that the Legislature has construed section 27-12-102.4 to have an entirely different meaning than that being argued by the Division, it is apparent that at a minimum the statute is capable of reasonably being read to have more than one meaning. Thus, the issue in this case is whose construction is correct — the construction being urged by the Division, or the construction adopted by the Legislature.

B. The Legislative History Evidences That The Legislature Did Not Intend To Require Written Notice In Instances Where There Has Been Notice By Publication.

When faced with a question of statutory construction, this Court first looks to the plain meaning of the statute. *Strawberry Elec. v. Spanish Fork City,* 918 P.2d 870, 875 (Utah 1996). If the statute is ambiguous, this Court then resorts to legislative purpose,

relevant policy considerations and history for guidance. *World Peace Movement v. Newspaper Agency Corp.*, 879 P.2d 253, 259 (Utah 1994). In construing legislative intent, courts follow well established rules of statutory construction. One of the most well recognized rules of statutory construction is that, absent evidence to the contrary, the Legislature in enacting legislation is presumed to have done so advisedly. *Stephens v. Bonneville Travel, Inc.,* 935 P.2d 518, 520 (Utah 1997). Thus, the statutory words are read literally unless such reading is unreasonably confused or inoperable. *Id.* Another well established rule of statutory construction is that a legislative intent to change the meaning of a statute in the course of a general revision or recodification will not be inferred unless that intent is clearly and indubitably manifested. *See e.g., Passamano v. Travelers Indemnity Co.,* 882 P.2d 1312, 1321-22 (Colo. 1994). Absent a clear manifestation of a contrary intent, therefore, a statute that has been revised or recodified is presumed to reflect the legislative intent of the prior statute. *Id.*

Here, the Division itself acknowledges in its brief that when the Legislature revised and recodified section 27-12-102.4 it did not intend to make substantive changes in the meaning of that statute. In fact, Appellant gives legislative history from the floor debate where the sponsor of the bill underscored that point. Yet, as the Division further concedes, consistent with the construction adopted by the lower court, the recodified version of section 27-12-102.4 only requires written notice when notice by publication has not been made. *See* Appellant's brief at pp. 18-19.

Consequently, this Court is herein called upon to interpret a statute that was ambiguous at the time that the West Stansbury Road was vacated but which ambiguity was resolved when it was subsequently revised and recodified. Absent clear evidence to the contrary, therefore, the recodified version of the statute must be presumed to reflect the legislative intent of the prior statute.

In arguing for a contrary interpretation, however, the Division maintains that the Legislature simply made a "mistake" when it recodified section 27-12-102.4 as section 72-3-108. The Division offers no evidence of who the "1998 rewriters" referenced in its brief were, how they made such a mistake, no legislative history acknowledging a mistake, or even any basis to conclude that recent amendments to the statute made during the 2000 legislative session were intended to correct such a mistake. Instead, the Division relies exclusively on its argument that the statute, as construed by the lower court, would deprive abutting landowners to due process of law, would be inconsistent with the purpose of the statute and a prior appellate court decision, and is contrary to existing law.

For the reasons discussed below, each of these arguments is without merit.

1. Contrary To The Arguments Of The Division, Notice By Publication Does Not Violate An Abutting Property Owner's Right To Due Process Of Law.

Citing *Tolman v. Salt Lake County,* 437 P.2d 442 (Utah 1968), the Division argues that Appellees' construction of section 27-12-102.4 would violate an abutting landowner's right to due process of law. In so doing, however, the Division displays a

lack of understanding regarding the nature of the governmental action involved in vacating a public road. Contrary to the belief of the Division, procedural due process does not apply to a legislative action to vacate a road.

As indicated by the express language in section 27-12-102.4, the decision to vacate a road is to be made by "the legislative body" of the county by "ordinance." Other states also categorize such actions as legislative. *See, e.g., North Laramie Land Co. v. Hoffman*, 268 U.S. 276, 282-285 (1925) (wherein the court held that the decision to establish a public road is a legislative function); *Nyman v. City of Eugene,* 593 P.2d 515, 521 (Ore. 1979) (wherein the Oregon Supreme Court concluded that the decision to widen a road was a policy decision of a legislative nature) and *Thayer v. King County,* 731 P.2d 1167, 1169 (Wash. App. 1997) (holding that the power to vacate a road is a political function).

Procedural due process, however, does not attach to legislative decisions, but rather, only to decisions which are adjudicative in nature. *See e.g.*, *Mullane v. Central Hanover Trust Co.,* 339 U.S. 306, 313 (1950); *Horn v. County of Ventura*, 596 P.2d 1134 (Cal. 1979). By its very nature and function, the legislative process itself provides all process due. *County of Fairfax v. Southern Iron Works,* 410 S.E.2d 674, 679 (Va. 1991). Thus, the only notice Tooele County was required to provide was whatever notice was required by the legislature by statute in section 27-12-102.4, and no notice requirement is derived from any constitutional due process principle.

In addition to not being an adjudicative decision, a decision to vacate a road is not a "taking" within the meaning of due process. An abutting property owner only has a legal right to *reasonable* access to his or her property. *See e.g., Memmott v. Anderson*, 642 P.2d 750, 752 (Utah 1982) (finding the diversion caused by the relocation of a portion of a road did "not constitute a deprivation of reasonable access..."); *Mason v. State*, 656 P.2d 465, 649 (Utah 1982) (holding that an abutting landowner only has a right of reasonable access); and *Bailey Services & Supply Corp. v. State Road Commission,* 533 P.2d 882, 884 (Utah 1975) (finding that the construction of the a viaduct did not constitute a "taking" despite preventing plaintiff from being able to access his warehouse with large size trucks). Under Utah Code Ann. § 72-3-108(3), an abutting landowner to a vacated public road retains a private right of way in that road if required to reasonably access the property. *See e.g., Gillmor v. Wright*, 850 P.2d 431, 437-38 (Utah 1993) and *Mason*, 656 P.2d at 468. By definition therefore, the decision to vacate a road does not deprive the abutting landowner of the right to reasonable access. Absent a "taking," due process is not an issue.

It follows therefrom that the due process concerns addressed in *Tolman v. Salt Lake County* do not arise under section 27-12-102.4. Contrary to the arguments of the

Division, therefore, the construction adopted by the lower court does not raise concerns regarding the constitutionality of the statute.[4]

2. Contrary To The Arguments Of The Division, The Construction Adopted By The Lower Court Is Consistent With The Legislative Purpose Of The Statute.

In its brief, the Division argues that the purpose of the statute is to provide notice of the petition and hearing to both the general public and the abutting landowners so that a county commission can consider their input in determining whether or not to vacate a road. Without any factual foundation whatsoever, the Division then goes on to state in a summary fashion that "[t]he Legislature could not have thought the input necessary under section 27-12-102.4 would reach the county commissioners if the only notice given was notice to the general public in a local newspaper." Brief of Appellant at p. 15.

Contrary to the argument of the Division, notice by publication to the general public is not mutually exclusive of notice to abutting landowners. Given that abutting landowners are also members of the general public, the Legislature could have easily concluded that notice by publication to the general public would also provide sufficient notice to abutting landowners to satisfy the statutory purpose of providing such notice.

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[4] In this connection, the court is referred to Utah Code Ann. § 72-4-102 and Utah Code Ann. § 72-4-102.5. In these sections, a state highway may be deleted from the state highway system (which state highway may serve state-wide purposes (§ 72-4-102.5(2)(a), and also may provide access to property (§ 72-4-102.5(2)(f)) by the legislature or by the Department of Transportation submitting a list to the legislature of highways to be deleted for approval of the legislature. Consistent with the fact that decisions to vacate public roads are legislative in nature and do not implicate due process concerns, no publication in any newspaper whatsoever and no notice to abutting landowners whatsoever, is required.

In fact, it has long been recognized that notice by publication of legislative decisions to establish a public road [or to vacate such a road] is a sufficient means of notifying both the general public and abutting landowners of the proposed legislative action. For example, in *North Laramie Land Co. v. Hoffman*, 268 U.S. 276 (1925), an action challenging the sufficiency of notice of intent to establish a public road, the United States Supreme Court stated:

> All persons are charged with knowledge of the provisions of statutes and must take note of the procedure adopted by them and when that procedure is not unreasonable or arbitrary there are no constitutional limitations relieving them from conforming to it.... Owners of real estate may so order their affairs that they may be informed of tax and condemnation proceedings of which there is published notice, and the law may be framed in recognition of that fact. In consequence, it has been uniformly held that statutes providing for taxation or condemnation of land may adopt a procedure, summary in character, and that notice of such proceedings may be indirect, provided only that the period of notice of the initiation of proceedings and the method of giving it are reasonably adapted to the nature of the proceedings and their subject matter and afford to the property owner reasonable opportunity at some stage of the proceedings to protect his property from an arbitrary or unjust appropriation.

Id. at 283.

Moreover, as aptly illustrated in this case, a legislative proposal to vacate a public road is an issue that invariably engenders widespread public comment and interest. As the undisputed facts of record disclose, following the publication of the Petition to Vacate, that proposed legislative action became the subject of widespread

media attention (R. 296). As a result of the public interest generated thereby, over forty people attended the hearing before the county commission (R. 296). In addition to interested citizens who attended in their individual capacities, those in attendance included a State legislator, representative(s) of the Sierra Club, the Wasatch Mountain Club, the Utah Mountain Bike Association, the Tooele Wildlife Federation, MagCorp and the BLM, and all of the owners or record of land abutting the road except one who had previously expressed its neutrality (R. 296).

Given the widespread public interest that such petitions engender, the legislature could have reasonably concluded that notice by publication alone would be sufficient to apprise abutting landowners of that proposed legislative action. Conversely, in instances where notice by publication was not possible (where no newspaper of general circulation is published in the county), the legislature could have reasonably concluded that notice by *posting alone* would not be sufficient to generate such widespread interest and knowledge. Thus, in such instances, the legislature could just as reasonably have concluded that written notice to abutting landowners should be required.

Contrary to the arguments of the Division, therefore, it is readily apparent that the construction urged by Appellees and adopted by the lower court is *not* inconsistent with the purpose of the statute.

3. Contrary To The Arguments Of The Division, The Construction Adopted By The Lower Court Is Not Inconsistent With The Utah Court Of Appeal's Decision In *Nelson v. Provo City*.

The Division's assertion that the construction adopted by the lower court is contrary to the decision in *Nelson v. Provo City*, 872 P.2d 35 (Utah App. 1994) is without merit. Unlike the present instance, that case involved a complete and utter failure on the part of the city to provide any meaningful notice, written or otherwise. Although the court admittedly stated in dicta without meaningful analysis that the statute required notice by publication *and* written notice, the facts in that case did not require the court to address the specific question at issue herein. In addition, the decision in *Nelson* was rendered prior to the 1998 recodification of section 27-12-102.4 as section 72-3-108 in which the Legislature manifested a contrary intent. Thus, the Utah Court of Appeals in *Nelson v Provo City* did not have the benefit of the legislature's subsequent manifestation of its intent to only require written notice in instances where notice by publication is not available.

Consequently, the Divisions' reliance on that decision is misplaced.

4. Contrary To The Arguments Of The Division, the Amendment Made To Section 72-3-108 During The 2000 Legislative Session Does Not Vindicate Its Position.

In its brief the Division refers to the recent *amendment* to section 72-3-108 during the 2000 legislative session. In that legislation, the legislature expressly *amended* section 72-3-108 to require notice to the Utah Department of Transportation and to abutting landowners whenever a county vacates a public road, regardless as to

whether the State is an abutting landowner or notice by publication has been made. Without citing to any legislative history whatsoever in support of its position, the Division asserts that this amendment was intended to correct the legislature's prior error in 1998 when it restructured and recodified section 27-12-102.4 so as to only require written notice when notice by publication is not available. Absent evidence of a contrary intent, however, it is a well settled rule of statutory construction that an amendment to a statute manifests the Legislature's intent to effectuate a change in the law. *See, e.g., Totorica v. Western Equipment Co.*, 401 P.2d 817, 821 (Idaho 1965). Contrary to the arguments of the Division, therefore, the recent amendment of section 72-3-108 actually supports Appellees' position that prior thereto written notice was only required where notice by publication was not available.

II. EVEN ASSUMING THAT SECTION 27-12-102.4 REQUIRED BOTH WRITTEN NOTICE AND NOTICE BY PUBLICATION, THE DECISION OF THE LOWER COURT MUST BE AFFIRMED BECAUSE THE DIVISION WOULD *NOT* HAVE BEEN ENTITLED TO SUCH NOTICE IN ANY EVENT.

Regardless as to how this court resolves the ambiguity concerning whether or not written notice was required, the decision of the lower court must be affirmed because:

1. The undisputed facts of record established that as a matter of law the Division was not an abutting landowner; and

2. In any event, the Division was not an abutting landowner *of record* as a matter of law and, as a consequence, its address did not appear on the rolls of the Tooele county Assessor.

A. As A Matter Of Law, The Division Was Not An Abutting Landowner.

In support of its motion for summary judgment, the Division sets forth as an undisputed fact that it did not receive written notice of the Petition to Vacate (R. 107). Nowhere in its Statement of Undisputed Facts, however, did the Division set forth that it was the owner of lands abutting the vacated portion of the West Stansbury Road that Tooele County was claiming at the time to be county road.

Conversely, Tooele County submitted the affidavit of the Tooele County recorder attesting to the fact that the Division "was not an owner of property abutting the West Stansbury Road..." (R. 114) Likewise, in support of Six Mile Ranch and the Bleazard's cross motion for summary judgment, they set forth as an undisputed fact of record that the only portion of the West Stansbury Road that at the time was being claimed by Tooele County to be a county road was located above and did not abut the meander line of the Great Salt Lake and, therefore, did not abut the sovereign lands at issue (R. 299-300).

In response thereto, the Division did not dispute as a factual matter said Appellees' assertions of fact, let alone with citations to the record. In fact, the Division did not dispute any of Appellee Six Mile Ranch's and the Bleazards thirty-six separately

enumerated statements of undisputed facts. Because the Division did not dispute those facts, for purposes of this appeal those facts are deemed to have been admitted. Utah R. Civ. Procedure, Rule 56(e); *Parrish v. Layton City Corp.,* 542 P.2d 1086, 1087 (Utah 1975).

It follows therefrom that as a matter of law the Division is not an abutting landowner to the portion of the West Stansbury Road that was vacated.

B. As A Matter Of Law, The Division Was Neither An Owner Of Record Nor Did Its Address Appear On The Rolls Of The Tooele County Assessor.

Notwithstanding the ambiguity in section 27-12-102.4 regarding whether written notice was required in addition to notice by publication, the statute clearly and unambiguously only requires that written notice be provided to "all owners *of record*...addressed to the mailing address appearing on the rolls of the county assessor...." Utah Code Ann. § 27-12-102.4 (Supp. 1993). In Appellant's brief, the Division admits that it was neither an owner *of record* nor did its address appear on the rolls of the Tooele County Assessor. (Brief of Appellant at pp. 20-21) A *priori,* under the plain and unambiguous terms of section 27-12-102.4, the Division was not a party entitled to notice even assuming that it was (1) an abutting landowner and (2) the statute required such notice to be provided.

In an attempt to avoid this inescapable conclusion, the Division first attempts to sidestep this issue by arguing that the basis of the lower court's ruling was that the

Division was not a "taxpayer."[5] Brief of Appellant at pp. 20-26. This argument, however, mischaracterizes the record. Contrary to the arguments of the Division, as expressly set forth in the Order Granting Summary Judgment, the lower court ruled that assuming section 27-12-102.4 required written notice to be provided in addition to notice by publication, summary judgment in favor of defendants was nevertheless appropriate "because the Division was not an abutting property owner on the rolls of the Tooele County Assessor as specified therein." (Brief of Appellant, Addendum A at p. 2). Likewise, in making its oral ruling following argument of counsel the lower court does not state that the basis of its decision was that the Division is not a taxpayer. (Brief of Appellant, Addendum C).

Similarly, in an effort to sidestep the fact that it was not an owner of record, the Division in its brief attempts to blame Tooele County for that omission. To that end, the Division cites the Court to Utah Code Ann. § 17-12-22 (1999) requiring county recorders to prepare plats showing the record owners of property and Utah Code Ann.

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[5] Although some argument was presented to the lower court concerning tax paying property owners, the Division's arguments to the effect that (1) only tax payers are on the rolls of the county assessor, and (2) providing notice only to tax payers is a manifestly absurd, are inaccurate and misplaced. The Division shows in its brief and in Addendum G thereto, examples of numerous State-owned parcels in Tooele County (all of which appear to be some distant away from Stansbury Island) that the State has chosen to place on the rolls of the county assessor. Each of the ten parcels for which the county assessor information has an address associated with it on an individual basis. Even though ownership of each parcel is in the State, the ten parcels have among them six different addresses, evidencing that the State has designated different departments or agencies concerned with the different parcels. Clearly, the State has the ability and responsibility to place its land ownership on the rolls of the county assessor. Similarly, even though in its brief the Division argues that owners of the Matheson Courthouse, the City and County Building, the Salt Lake Temple, the University Hospital and other property tax exempt parcels would not receive a notice, attached hereto as Addendum B are certified copies of the Salt Lake County Assessor's records listing various of such properties on the rolls of the Salt Lake County Assessor, along with the appropriate addresses for mailing of notices.

§ 59-2-303 (1996) requiring assessors to be fully acquainted with property in the county. Brief of Appellant at p. 21. Notably absent, however, from the Division's recitation of the statutory authority for its contention, however, is Utah Code Ann. § 57-3-102 and Utah Code Ann. § 57-3-103 imposing the burden of recording an ownership in property on the owner of that property — in this case, the Division.

The fact of the matter is that notwithstanding its inappropriate suggestions to the contrary on pp. 2 & 24 of its brief, the Division is not an owner *of record*, the Division is the party at fault for that omission, and as a consequence, the rolls of the Tooele County Assessor do not show the address to which notice under that statute would be mailed. Because the Division was neither an owner of record nor did its address appear on the rolls of the Tooele County Assessor, it follows that it was not entitled under the clear language of section 27-12-102.4 to written notice. The decision of the lower court granting summary judgment in favor of Defendants must therefore be affirmed.

III. PUBLIC POLICY CONSIDERATIONS WEIGH AGAINST CONSTRUING SECTION 27-12-102.4 TO HAVE REQUIRED THAT WRITTEN NOTICE BE PROVIDED TO THE DIVISION.

Contrary to there being a basis to ignore section 27-12-102.4 as written and declare the Ordinance invalid, there are substantial and significant public policy reasons to uphold the Ordinance as valid. The Division would have this Court believe that upholding Ordinance is an absurd result, even though (1) it was not an owner of record, (2) all owners of record received actual notice and participated or waived participation

at the hearing, (3) reliance on the Ordinance has been placed for over seven years by the private parties owning property along the road, investing time and capital in reliance on the validity of the Ordinance, and (4) the Division has numerous means of alternative access to the lake bed in the Stansbury basin and elsewhere. On the contrary, it would be an absurd result to overturn the Ordinance under those circumstances and interpret section 27-12-102.4 as suggested by the Division.

Such an interpretation would be contrary to the public policy in favor of citizens being able to rely on legislative decisions made by elected officials. More importantly, construing section 27-12-102.4 to require written notice to abutting landowners who are not of record and whose addresses do not appear on the rolls of the County Assessor would create undue confusion and uncertainty regarding when such notice is required. As a result, it would open the door to other parties claiming in other instances that they too should have received notice of a petition to vacate and thereby other decisions to vacate roads should be set aside. Indeed, this risk is not an idle one. Like the sovereign lands at issue herein, there exist vast tracks of land throughout the State of Utah that have never been severed from the public domain going back to Statehood. As is the case here, because those lands have never been severed into parcels that would have been recorded and issued a parcel number, it is likely that these lands too have not been recorded and do not appear on the rolls of the County Assessor in which said lands are located. Because such lands constitute a majority of the lands within the State of Utah, it is likely that secondary county roads like the West Stansbury Road run

through and abut those lands. Furthermore, there likely are numerous private owners of parcels or tracts of land whose interests are not of record.

Assuming the owner of such public lands, be it the State of Utah or the United States, or private owners of parcels or tracts of land, did not receive notice of a petition to vacate, therefore, the legality of all such prior vacations that have taken place during the many years since at least the enactment of section 27-12-102.4 up to the effective date of the 2000 amendment would be suspect.

To the extent that this Court believes that the statute should have required notice to the State, or in all cases should so require, the court nevertheless need not address that issue. The statute has already been amended and that issue was addressed by the Legislature in the 2000 amendment which now requires notice to be given to the State for any proposed vacation.[6] Addendum B to Division's brief, last page. Thus, a ruling in favor of the Division in this case would remedy no future problems respecting county vacation ordinances, but could have the potential to create serious title problems by opening up to challenge previously-enacted ordinances vacating public roads that have been enacted over the years.

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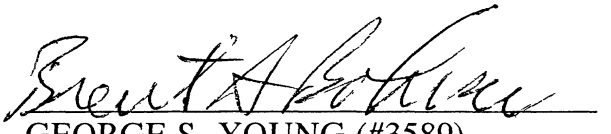
[6] One of the bases of the lower court's ruling was that the County represented the public interest, and that has been the legislative scheme with respect to roads of this nature for some for time. Addendum C to Division's brief, p. 43, lines 9-11. The statutory scheme in place for many years prior to 2000 was that the counties represented the public interest, and even the interests of the State insofar as counties were political subdivisions of the State. Public policy should certainly have required nothing further in the way of the representation of the public interest during such time.

CONCLUSION

In conclusion, the Division was not entitled to written notice of the Petition to Vacate the West Stansbury Road because (1) section 27-12-102.4 did not require written notice in addition to notice by publication, and (2) in any event, the Division was neither an abutting landowner nor was it an owner of record whose address appeared on the rolls of the Tooele County Assessor.

Respectfully submitted this 8th day of December, 2000.



GEORGE S. YOUNG (#3589)
BRENT A. BOHMAN (#4275)
Attorneys for Other Appellees

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of December, 2000, I caused two copies of the foregoing **Brief of Appellees** to be mailed, with first class postage pre-paid, to the following:

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Salt Lake City, Utah 84114-0854

Douglas Ahlstrom
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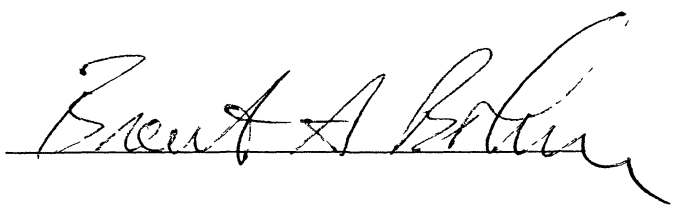
Tooele, Utah 84074



ADDENDA

Tab A

Tab B

TATE OF UTAH DIVISION OF PRINT V UPDATE REAL ESTATE 3011000
AC CONSTR & MGMNT LEGAL BUILDINGS 68000000
TAX CLASS OE MOTOR VEHIC 0
50 N STATE ST # N4110 EDIT 1 FACTOR BYPASS TOTAL VALUE 0
ALT LAKE CITY UT 84114110450
OC: 450 S STATE ST EDIT 1 BOOK 7846 PAGE 0001 DATE 01/08/1999
UB: TYPE UNKN PLAT

11/29/2000 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY
BEG NE COR LOT 6, BLK 39, PLAT A, SLC SUR; S 0¬00'40" E 660.15 FT; S 89¬58'24" W 330.06 FT; N 0¬00'59" W 660.15 FT; N 89¬58'24" E 330.12 FT TO BEG.

FKEYS: 1=VTNH 2=VTOP 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV

This is a true and correct copy of a Real Property Assessment Record on file in the Salt Lake County Assessor's Office.
By Carolyn Bass
Deputy Assessor
Date 11/29/2000

ALT LAKE TABERNACLE PRINT V UPDATE REAL ESTATE
ORPORATION LEGAL BUILDINGS 60003100
LDS CHURCH REAL ESTATE DIVISN TAX CLASS BE MOTOR VEHIC 0
0 E NORTHTEMPLE ST #1200 EDIT 1 FACTOR BYPASS TOTAL VALUE 0
ALT LAKE CITY UT 84150000250
OC: 50 W SOUTHTEMPLE ST EDIT 1 BOOK 8013 PAGE 2751 DATE 09/14/1998
UB: TYPE UNKN PLAT
11/29/2000 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY
LOTS 1, 2, 3, 4, & 5, BLK 87, PLAT A, SLC SUR. 7992-1495

PFKEYS: 1=VTNH 2=VTOP 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV

This is a true and correct copy of a Real Property Assessment Record on file in the Salt Lake County Assessor's Office.
By Carolyn Bass
Deputy Assessor
Date 11/29/2000

ALT LAKE CITY PRINT V UPDATE REAL ESTATE

	LEGAL	BUILDINGS	58000000
PROPERTY MANAGEMENT	TAX CLASS OE	MOTOR VEHIC	0
51 S STATE ST # 345 EDIT 1	FACTOR BYPASS	TOTAL VALUE	0

ALT LAKE CITY UT 84111310451
LOC: 451 S STATE ST EDIT 1 BOOK 5881 PAGE 0600 DATE 02/27/1987
SUB: TYPE UNKN PLAT

11/29/2000 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY
ALL OF BLK 38, PLAT A, SLC SURVEY.

FKEYS: 1=VTNH 2=VTOP 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV

This is a true and correct copy of a Real Property Assessment Record on file in the Salt Lake County Assessor's Office
By Carolyn Bass
Deputy Assessor
Date 11/29/2000

EMPLE CORP OF CH OC OF LDS PRINT V UPDATE REAL ESTATE

	LEGAL	BUILDINGS	30903100
TAX CLASS	BE	MOTOR VEHIC	0
0 E NORTHTEMPLE ST EDIT 1	FACTOR BYPASS	TOTAL VALUE	0

ALT LAKE CITY UT 84150000250
OC: 49 N MAIN ST EDIT 1 BOOK 7992 PAGE 1495 DATE 09/14/1998
UB: TYPE UNKN PLAT

11/29/2000 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY
LOTS 6, 7 & 8, BLK 87, PLAT A, SLC SUR.

FKEYS: 1=VTNH 2=VTOP 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV

This is a true and correct copy of a Real Property Assessment Record on file in the Salt Lake County Assessor's Office.
By Carolyn Bass
Deputy Assessor
Date 11/29/2000

SRP OF PB OF CH OC OF LDS PRINT V UPDATE REAL ESTATE

	LEGAL	BUILDINGS	12000000
LDS CH TAX ADMIN	TAX CLASS BE	MOTOR VEHIC	0
0 E NORTHTEMPLE ST EDIT 1	FACTOR BYPASS	TOTAL VALUE	0
ALT LAKE CITY UT 84150000250			

OC: 161 N MAIN ST EDIT 1 BOOK 7703 PAGE 1943 DATE 03/11/1998
UB: TYPE UNKN PLAT

11/29/2000 PROPERTY DESCRIPTION FOR TAXATION PURPOSES ONLY
ALL OF LOTS 1 THROUGH 8, BLK 94, PLAT A, SLC SUR.
7854-224,225, 7865-734

FKEYS: 1=VTNH 2=VTOP 4=VTAU 6=NEXT 7=RTRN VTAS 8=RXMU 10=RXBK 11=RXPN 12=PREV

This is a true and correct copy of a Real Property Assessment Record on file in the Salt Lake County Assessor's Office.
By Carolyn Bass
Deputy Assessor
Date 11/29/2000